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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,553	01/02/2004	James E. Wright	A-8586	8756

7590 08/09/2004

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,553

Applicant(s)

WRIGHT, JAMES E.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/2/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, section h), applicant claims "... to deliver power for ignition to a rocket assisted payload...". Would not the booster rocket 46 be the structure that should be ignited via the delivery of power in order for the rocket to launch? In claims 3 and 5, applicant claims "spacers". Are not these spacers the "means for retaining said containerized concentric launch tubes in an upstanding, vertically oriented array"? The claim language does not indicate this. If some other structure is intended to correspond to the claimed "means for retaining said containerized concentric launch tubes in an upstanding, vertically oriented array", please indicate what structure this would be. In claim 5, line 2, the phrase "the body" lacks an antecedent.

The term "heavy" in claim 2 is a relative term which renders the claim indefinite. The term "heavy" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. One cannot determine how heavy the metal must be in order to infringe the claims. What is heavy relative to one weight could be light relative to another weight.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant lacks support in the written specification for the claim language of claim 2 directed to a container that is 20 feet in length; 8 feet in width; and 8 feet in height. Applicant lacks support in the written specification for the claim language of claim 3 directed to

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spacers that maintain the launch tubes about a foot apart as measured from the center of the missile launch tubes. Applicant lacks support in the written specification for the claim language of claim 4 directed to a launch tube that is closed by a curved wall the top of which is open upwardly.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinstein in view of Cammin-Christy or Yagla.

Weinstein discloses a rocket assisted payload launch system comprising:

- | | |
|--|--|
| a) a container including 2 end walls and 2 side walls; | 10 |
| b) a bottom wall; | see fig. 3 |
| c) a plurality of concentric tubes having open tops; | 12 |
| d) means for retaining the tubes in an upstanding vertically oriented array; | y, support for 12
(equivalent means) |
| e) a predetermined spacing distance of tubes; | see fig. 3 |
| f) an umbilical cord to deliver power to the rocket payloads; | connector between 24, 34 and
connector between 30, 32 |

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g) a sequence controller for selective energization. see fig. 2

Weinstein applies as recited above. However, undisclosed is a launch tube with a curved closed lower end. Cammin-Christy (14) and Yagla (24D) each teach a launch tube with a curved closed lower end. Applicant is substituting one state of the art launch tube for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Cammin-Christy or Yagla to the Weinstein rocket launch system and have a launch system with a different type of launch tubes.

5. Claims 2-3 and 6-7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

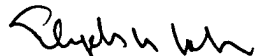
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carter et al., Re et al., Fischer et al., Borgwarth et al., Broden, and Kihm et al. disclose other state of the art rocket launchers.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326. The fax phone number for after final communications is (703) 872-9327.

STEPHEN M. JOHNSON
PRIMARY EXAMINER



Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ